

1 PAUL B. SNYDER
2 United States Bankruptcy Judge
3 1717 Pacific Ave, Suite 2209
4 Tacoma, WA 98402

✓ FILED
____ LODGED
____ RECEIVED

December 18, 2006

MARK L. HATCHER
CLERK U.S. BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA
____ DEPUTY

7 **UNITED STATES BANKRUPTCY COURT**
8 **WESTERN DISTRICT OF WASHINGTON AT TACOMA**

9 In re:

10 BOBBY G. ROBERTS and CATHERINE A.
11 ROBERTS,

Debtors.

Case No. 06-42209

MEMORANDUM DECISION
NOT FOR PUBLICATION

12 This matter came for hearing before the Court on December 5, 2006, on the Chapter
13 13 Trustee's (Trustee) Objection to Confirmation. A subsequent telephonic hearing was held
14 on December 13, 2006, to provide the Court with additional information. Based on the
15 pleadings and arguments presented, the Court's findings of fact and conclusions of law are as
16 follows:
17

18 **FINDINGS OF FACT**

19 On September 18, 2006, Bobby and Catherine Roberts (Debtors) filed bankruptcy
20 under Title 11, Chapter 13. The Debtors' Chapter 13 Plan (Plan) proposes a monthly
21 payment of \$385 for an applicable commitment period of 36 months and a 0% distribution to
22 unsecured creditors.¹ The Debtors list a liquidation amount of \$30,388.² In paragraph 10.B.
23

24 ¹ During the telephonic hearing of December 13, 2006, the Debtors conceded, and the Trustee
25 agreed, that contrary to their statement as to a 0% distribution to unsecured creditors, the
Debtors have disposable income as calculated pursuant to 11 U.S.C. § 1325(b)(2).
t Dec. 18, 2006

1 of the Plan, the Debtors propose to sell or refinance their residence within 36 months of the
2 petition date and pay to the Trustee from those proceeds an amount sufficient to pay the
3 liquidation amount to timely filed and allowed unsecured claims, or pay 100% of such claims,
4 whichever amount is less. Schedule F indicates there is \$81,476 in general unsecured debt.
5 Paragraph 10.B. also sets forth that in the event of a sale or refinance prior to month 36, the
6 Plan payments will be reduced to \$50 per month for the duration of the case. On November
7 28, 2006, the Trustee filed an Objection to Confirmation.

8 **CONCLUSIONS OF LAW AND DISCUSSION**

9
10 The Trustee objects to the provision in paragraph 10.B. that allows the Debtors to
11 automatically reduce their Plan payment to \$50 per month after refinancing or a sale of their
12 residence. The Trustee contends that a payment reduction should be accomplished by a
13 Chapter 13 plan modification filed at the time of refinance/sale, and that the Plan payment
14 should be based on the amount of surplus income the Debtors have as of that time. The
15 Debtors argue that such an automatic reduction in their Plan payment will save them both
16 time and money after the proposed refinance/sale occurs, in that they will not be required to
17 prepare a modified plan and seek Court approval. They propose that if, upon refinance/sale,
18 the Trustee determines the Plan payment should be increased, the Trustee and Debtors can
19 simply stipulate to an increased payment without going through a formal Chapter 13 plan
20 modification process. In the event the Debtors determine that the Plan payment should be
21 less than \$50 per month, they can file a motion to modify at that time.

22
23 There is no direct legal authority that addresses the issue before the Court: Upon
24 refinance, should the burden to alter the Plan payment amount through Chapter 13 plan

25 ² In briefing submitted after the telephonic hearing, both the Trustee and Debtors indicated that the correct liquidation value is approximately \$23,492.61.

1 modification pursuant to 11 U.S.C. § 1329 be on the Trustee or on the Debtors? For the
2 reasons set forth below, the Court concludes that the burden to alter the Plan payment
3 amount should be placed on the Debtors.

4 The Court is sympathetic with the Debtors' desire to reduce their bankruptcy costs, and
5 applauds Debtors' counsel's efforts to implement a system that would potentially benefit all
6 like kind debtors and their creditors. The Court is persuaded, however, that the burden for
7 any change in the Debtors' Plan should remain on the Debtors through the modification
8 process. First, 11 U.S.C. § 1325(b)(1)(B) requires that a Chapter 13 plan provide all of the
9 debtor's projected disposable income to be received during the applicable commitment period
10 (APC). The Debtors concede that they must make Plan payments throughout the APC.³
11 Based on the calculations submitted by both the Trustee and Debtors after the telephonic
12 hearing, the proposed monthly payment of \$385 appears to satisfy this requirement. The
13 Debtors, however, agree with the Trustee that the proposed post-refinance/sale monthly
14 payment of \$50 has no basis in fact with respect to their bankruptcy case. The Debtors
15 proposed this particular amount based on their attorney's experiences with similar cases.
16 Because it is admitted that the \$50 payment is not the Debtors' projected disposable income
17 as of the refinance, the Court agrees that this proposed payment does not satisfy the
18 disposable income requirement of § 1325(b)(1)(B).
19
20

21 The Trustee also makes a compelling argument that the provision in paragraph 10.B.,
22 which states that the Plan payments "shall be reduced to \$50 per month for the duration of
23 their case," may have collateral estoppel effect at later hearings. Although the Court need not
24 decide this issue at this time, the mere possibility that the \$50 payment, which is not
25

³ The Debtors, however, do not concede that the APC is a temporal, as opposed to a monetary, requirement. The Court need not address this issue at this time.

1 supported by any evidence, could be binding on the Trustee and creditors further supports the
2 conclusion that any change to the Plan payment should be made when a change to the
3 Debtors' circumstances actually occurs.

4 Additionally, while the Debtors contend that if warranted they and the Trustee could
5 simply stipulate to an increased payment after refinance, the Debtors do not provide any
6 assurances that they would in fact stipulate to the Trustee's proposed increased payment.
7 The Court can envision a scenario where the Debtors quibble over any amount proposed by
8 the Trustee, thereby forcing the Trustee to seek formal modification pursuant to 11 U.S.C.
9 § 1329, and incur the accompanying costs.

10 Finally, as a practical matter, the Debtors are in the best position to seek a change to
11 their Plan payment, as they are in possession of all the necessary information. The Debtors
12 will know best when their refinance will be approved, what their new expenses will be, and
13 when their new mortgage payment will go into effect. The Debtors concede that they will be
14 required to update their schedules at the time of refinance. Moreover, utilizing the formal
15 modification process will provide notice to the creditors of any changes, and provide a date
16 certain on which the modified Plan payment will go into effect. As suggested by the Trustee,
17 the Debtors can include a motion to modify along with their request for refinance, thereby
18 defraying some of the anticipated costs.

19 Accordingly, the Trustee's Objection to Confirmation is sustained.
20

21 DATED: December 18, 2006

22 

23 Paul B. Snyder
24 U.S. Bankruptcy Judge
25